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6 Attorneys for Specially Appearing Defendant
7 VIEJAS BAND OF KUMEYAA'Y INDIANS, a
federally recognized Indian tribe, erroneously sued
8 as "VIEJAS FIRE DEPARTMENT"

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 JIM MAXWELL and KAY
12 MAXWELL, individually and as
guardians of TREVOR ALLEN
13 BRUCE and KELTEN TANNER
BRUCE; and JIM MAXWELL, as
14 executor of the ESTATE OF
KRISTEN MARIE MAXWELL-
BRUCE,,
15

16 Plaintiffs,

17 v.

18 COUNTY OF SAN DIEGO; ALPINE
FIRE PROTECTION DISTRICT;
19 VIEJAS FIRE DEPARTMENT;
DEPUTY LOWELL BRYAN "SAM"
BRUCE; DOES 1-50,
20

21 Defendants.

CASE NO. 07 CV 2385 JAH WMC

**DECLARATION OF BOBBY L.
BARRETT IN SUPPORT OF
MOTION TO DISMISS FOR LACK
OF SUBJECT MATTER
JURISDICTION [Rule 12(b)(1)] (By Fax)**

CASE FILED: December 19, 2007
IC JUDGE: Hon. John A. Houston
DEPT: 11 (2nd Floor)
DATE: March 3, 2008
TIME: 2:30 p.m.

22 I, Bobby L. Barrett, declare:

23 1. I am the Tribal Chairman of the Tribal Council for the Viejas Band of
24 Kumeyaay Indians (the "Viejas Band" or the "Band"), a federally recognized Indian
25 tribe. I have served as the Band's Tribal Chairman since 2007. Prior to that, I had
26 served as the Band's Vice-Chairman since 2001. I have personal knowledge of all
27 facts set forth herein unless otherwise stated. This declaration is made in support of
28 the Viejas Band's motion to dismiss, which is filed herewith.

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2. The Viejas Band is a federally recognized Indian tribe which is identified on the Federal Register listing of federally recognized tribes as the Capitan Grande Band of Diegueno Mission Indians of California: Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California. A copy of the Federal Register listing is attached as Exhibit A to the accompanying Memorandum of Points and Authorities.¹

3. Every enrolled member of the Viejas Band, age eighteen or older, is a member of the Band's "General Council." Every two years, the General Council elects seven of its members to the Tribal Council, including the Chairman. The Tribal Council is the governing body of the Band.


4. The Viejas Band established a fire department (hereinafter "Viejas Fire Department") in October, 2006. The Band operates Viejas Fire Department for the purposes of promoting the Band's general welfare and for providing benefits and assistance to the Band's members. Through Viejas Fire Department, the Band provides fire protection and emergency medical services to the Band's 1,600 acre reservation, which is located east of Alpine, California, and also responds to calls from non-reservation neighboring communities, and will assist other agencies upon request.

5. Viejas Fire Department is an entity of the Band and is not incorporated or otherwise organized under the laws of any state. Viejas Fire Department is wholly owned and funded by the Band.

6. In my position as Chairman, and my prior position as Vice-Chairman, I would be aware of any waivers of the Band's sovereign immunity. The Band has not waived its sovereign immunity relating to the provision of emergency services at issue in this lawsuit.

I declare under penalty of perjury that the foregoing is true and correct. Executed this

23 day of JANUARY 2008 at ALPINE, California.


Bobby L. Barrett

¹ Unless otherwise indicated, all exhibits referenced herein are attached to the accompanying Memorandum of Points and Authorities, filed herewith.